LIBRARY
SUPREME COURT, U. S.

Office Supreme Court, U.S.
FILED
OCT 1 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968

No. 533

EURA MAE HIGGINBOTHAM GREEN, ET AL.,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents

RESPONDENTS' BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI

Jos. C. Brown
Houston Club Building
Houston, Texas 77002

George A. Weller
Post Office Box 350
Beaumont, Texas 77704

Ewell Strong
Post Office Box 1632
Beaumont, Texas 77701

Major T. Bell
Beaumont Savings Building
Beaumont, Texas 77701

James W. Lee
Jesse J. Lee
Thomas H. Lee
Chamber of Commerce Bldg.
Houston, Texas 77002

Attorneys for Respondents

(Addresses of all Attorneys on page 6)

Alpha Law Brief Co., M & M Bldg., Houston, Texas 77002

IN THE

Supreme Court of the United States

October Term, 1968

No. 533

EURA MAE HIGGINBOTHAM GREEN, ET AL.,
Petitioners,

v.

THE TEXAS GULF SULPHUR COMPANY, ET AL.,
Respondents

RESPONDENTS' BRIEF OPPOSING THE PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

The respondents respectfully pray that this Court deny the petition for writ of certiorari, because of the following;

I.

The opinions of the Court of Appeals (Fifth Circuit) relating to this case are reported in 393 F.2d at pages 67, 68 and 69, respectively.

II.

Petitioners' theory is well stated in the opinion of the Court of Appeals: "They urge first that a tax deed in 1850 vested title in the State of Texas and second that if they could have the tax deed set aside, they would be entitled to the minerals rather than appellees", 393 F.2d 67, at page 68.

It is elementary that a plaintiff must recover upon the strength of his own title to the land, yet the petitioners, plaintiffs in the trial court, in the first sentence on page 5 of their petition for certiorari state "That the State of Texas took title under the tax deed is not disputed, and is affirmed by the Ingalls' patent of 1863 and the Douthit patent of 1867."

This is followed on the same page by petitioners' statement that if the tax deed be set aside, petitioners could pursue a claim as discoverers of a vacancy under Section 6 of Article 5421c of the Texas Civil Statutes. Petitioners do not set out the several pages of said Section 6 and make no claim that they have complied with any of its provisions, only saying that a declaration that title is in the State of Texas "would enable" them to claim "as discoverers of a vacancy".

That the Humphries league in controversy is not "a vacancy" is established by the third paragraph of said Section 6 of Article 5421c of the Texas Civil Statutes[1]; by petitioners' (plaintiffs), complaint in the trial court alleging that the described tract of land was titled to William Humphries on February 14, 1835[2]; by the de-

---

1. Appendix to this Brief, p. 9.

2. Plaintiffs' Original Complaint, Transcript of Record, Vol. 1 of 1, p. 44.

cision of the Court of Civil Appeals in *John I. Foster, Jr. v. Gulf Oil Corporation* in which the Supreme Court of Texas refused writ of error, n.r.e. on October 5, 1960.[3]

In the *Foster* case the appellate court stated, "The land in suit unquestionably became 'titled' when it was granted to Humphries", 335 S.W.2d 847; that "as reflected by appellant's petition, field notes which were made for Humphries and which include the land are on file in the General Land Office (p. 847-848); and that "We think this sufficient, regardless of the true state of the title, to show that, within the purview of Article 5421c, the land is surveyed and titled land and not vacant and unsurveyed land" (p. 848).

We believe the foregoing establishes that the area involved is not a "vacancy". If it is not a vacancy, and if it be public area belonging to the State of Texas, petitioners show no right in themselves, nor in any other party, to acquire it or to recover it. If it be public land belonging to the State of Texas, petitioners are not entitled to it, or to any prior right to it, for the mere asking, but the land must be sold to the highest bidder in accordance with the statutes of the State of Texas whereunder petitioners have no right superior to any other person to acquire public lands.

Petitioners allege no compliance with the provisions of the statute whereunder public land may be purchased by the individual submitting the highest bid after the land has been duly advertised for sale.[4] John Doe and petitioners have equal rights to public lands, but neither

3. 335 S.W.2d 845; 161 Texas Supreme Court Reports, p. 632.

4. Appendix this Brief, p. 9.

may recover public lands without showing some right to acquire same under the laws of Texas.

III.

Plaintiffs in claiming solely as heirs of William Humphries[5] overlook the legal effect of the 1836 deed from William Humphries to William English[6] which left no title in Humphries to pass to his heirs.

IV.

Petitioners do not challenge the correctness of the decisions of the courts below that the non-claim and non-use of the land by petitioners and their predecessors for more than 125 years, measured against respondents' assertion of title and use of the land for at least more than 50 years under their recorded deeds, vested complete title in respondents presumptively as a matter of law and also under the 5, 10 and 25 year statutes of limitations of the State of Texas, Articles 5509, 5510 and 5519.[7]

V.

Petitioners do not controvert or deny the facts stated in the affidavits filed by respondents which establish that more than 50 years before this suit was filed respondents' predecessors in title under recorded deeds entered upon and used all of the land for homes, for farming, for pasturing, for mineral production, as well as other uses.

---

5. Original Complaint, Transcript of Record, Vol. 1 of 1, p. 39, par. 5 and p. 56, par. 15.

6. Transcript, p. 175. Warranty Deed William Humphries to William English, dated Feb. 14, 1836, recorded Dec. 26, 1860, in Vol. M, p. 399, Deed Records of Jefferson County, Texas.

7. Appendix to this Brief, pp. 10-11; Humphries v. Texas Gulf Sulphur Co., 393 F.2d 69, at p. 71, par. (1) et seq.

These affidavits reflect the unbroken and continuous possession and use of the land, including the minerals thereof, day-in and day-out by respondents and their predecessors, without break, for more than 50 years, together with the payment of taxes. During all of this period, and at all times prior thereto from 1836, petitioners asserted no claim, had no possession and made no use of any of the land.[8]

VI.

The judgment of May 20, 1885, for Mrs. Jane McFaddin and others against Henry E. Simpson and others did not affect the title that William English acquired from William Humphries in 1836,[9] nor the title that the heirs of William English theretofore conveyed to W. P. H. McFaddin, respondents' predecessors in title.[10]

VII.

SUMMARY

The opinions of the Court of Appeals in the three Humphries league cases, 393 F.2d, pages 67, 68 and 69 are correct, and should not be reviewed by this Court

---

8. In Volume 1, W.P.H. McFaddin, 100; J. H. Eastland and Henry L. Martens, 104; Roscoe Hannan and John Harbin, 137; John P. Brady, 143; Eugene C. Brazeal, 146; J.L.C. McFaddin, 151; Walter F. Myers, 165; In Volume 2, D. A. Snyder, 412; E. G. Bartlett, 414; Leopold H. Gravier, 416; Gus E. Watkins, 418; J. Frank Lewis, 429; J. W. Newton, 437; R. G. Sanders, 440; John J. Wheat, 442; W. N. Adams, 448; the perpetuated testimony of Sidney E. Broussard and others taken in 1939, 550-766.

9. Footnote 6, ante.

10. Common File, Volume 1 of 2 parts, pp. 17-22. Deed dated Dec. 31, 1883, recorded Deed Records of Jefferson County, Texas, Jan. 10, 1884, in Volume W, page 322.

because (1) petitioners as plaintiffs alleging title to be in the State of Texas cannot recover; (2) petitioners claiming as heirs of William Humphries have no title as Humphries conveyed the land to William English; (3) the non-claim of petitioners and their predecessors from 1836 to the filing of this suit, as a matter of law and presumptively, refutes their claim of title; and (4) the adverse possession of the land by respondents and their predecessors for more than 50 years clothes them with full title under the statutes of limitation of the State of Texas.

Respectfully submitted,

Jos. C. Brown
Houston Club Building
Houston, Texas 77002

Ewell Strong
Post Office Box 1632
Beaumont, Texas 77704

Samuel C. Lipscomb
1110 Goodhue Building
Beaumont, Texas

James W. Lee
Chamber of Commerce Bldg.
Houston, Texas 77002

Jesse J. Lee
Chamber of Commerce Bldg.
Houston, Texas 77002

W. B. Edwards
Fred A. Lange
Post Office Drawer 2100
Houston, Texas 77001

Forrest Smith
Post Office Box 900
Dallas, Texas

Major T. Bell
Beaumont Savings Building
Beaumont, Texas 77701

George A. Weller
Post Office Box 350
Beaumont, Texas 77704

Benjamin R. Powel
801 Santa Fe Building
Galveston, Texas 77550

Thomas H. Lee
Chamber of Commerce Bldg.
Houston, Texas 77002

William S. Clarke
Texaco Building
Houston, Texas 77002

J. C. Hardy
J. L. LyBrand
Petroleum Building
Beaumont, Texas

CERTIFICATE

I, Major T. Bell, do hereby certify that on this the _____ day of October, 1968, I served a copy of the above and foregoing Brief, with all attachments thereto, upon Andrew A. Wassick, Post Office Box 724, Chattanooga, Tennessee 37401, the attorney for the petitioners, by United States Certified Mail, with return receipt requested.

_____

Major T. Bell